IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1018 OF 2004

Sri Jai Prakash and others. ……Petitioners.

Versus

Civil Judge, Senior Division and others. ……...Respondents.

Hon'ble Rajesh Tandon, J.

By the present Writ Petition, the petitioner has prayed for quashing the order dated 4th October, 2004 in Suit No. 89 of 1980 (Brij Mohan and others Vs.Smt. Jayanti Devi and others).

Briefly stated, the Suit was filed by the plaintiff/respondent praying for declaration to the extent 5/6th share of the property in dispute. According to the plaint averments, the plaintiff has alleged in paragraph 3 of the plaint that Shankar Lal and Sri Ram Dayal were both real brothers and the property No. 28, Chakrata Road (30, Narishilp Mandir Marg), Dehradun is the property, of which both Shankar Lal and Ram Dayal are co-owners to the extent of half and half.

Plaintiff has also stated in paragraph 1 and 2 of the plaint that in pursuance of the decree passed in Suit No. 89 of 1953, which was decreed against Shankar Lal and Ram Dayal on 8th Nvember, 1954, the property was divided between them half and half as co-owners.

Petitioner has filed a Written Statement and the suit is pending before the court below. During the pendnecy of the case, the petitioner has filed an application under Order 6 Rule 17 of the Code of Civil Procedure. In the Application for amendment, it has been stated that the said property was wrongly construed as a property of Ram Dayal

and Shankar Lal and thus all actions purusuant to the decree in the aforesaid suit would be nonest and not binding on the sons of Ram Dayal and Shankar Lal, who are continuing and occupying as co-owners.

Counsel for the petitioner has also submitted that the judgment of B.K. Pillai Vs. Parameshwaran Pill and another, where it has been held by the Apex Court that in order to elaborate the pleadings, the amendment can always be made.

Relevant portion of the aforesaid judgment are quoted below:-

"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleading in such manner and on such terms as at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment can not be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

The Expression 'cause of action' in the present context does not mean every fact which it is material to be proved to entitle plaintiff to succeed as was said in Cooke v. Gill in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corpn. Ltd. and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood tomean 'new set of ideas': Dornan v. J.W. Ellis and Co. Ltd. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

Counsel for the respondent Sri B.P. Nautiyal has filed the caveat and has submitted that the amendment sought is highly malafide and has been filed at a belated stage.

I have perused the record of the Writ Petition. Form the copy of the plaint, if will appear that a reference of decree in O.S. No. 89 of 1953 (Shri Uggarsain and others Vs. Shri Ram Dayal) as well as the property being absolute of Ram Dayal and Shankar Lal, has been made, which is the sole contention of the plaintiff. This controversy has to be decided in order to establish the share of the plaintiffs.

Sri B.P. Nautiyal has prayed that the amendment sought in the Written Statement is something else and therefore, the same can not be permitted. Parties have agreed that permissible amendment can only be to the extent as to whether the property belongs to Ram Dayal and Shankar Dayal exclusively and as to whether the sons of Ram Dayal and Shankar Lal were alive at the relevant time and whether they have a right to transfer the property. Both the parties have agreed that an amendment may be sought only to this effect before the court below.

In view of the observations made above, the petitioner is permitted to amend the Written Statement, paragraph 20 in order to avid multiplicity of the proceedings.

Subject to the aforesaid observation, the Writ Petition is disposed of.

(RAJESH TANDON, J.)

15.10.2004
P.S.R.